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Forty-first session

SUMMARY RECORD OF THE 1043rd MEETING

Held at Headquarters, New York,
on Thursday, 28 March 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR (Vice-Chairman)

later: Mr. POCAR (Chairman)

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Sweden (continued) (CCPR/C/58/Add.7)

1. At the invitation of the CHAIRMAN, Mr. Correl, Mr. Lempert and Mr. Rundqvist (Sweden) took places at the Committee table.

2. Mr. WAKO, referring to section II of the list of issues, noted that aliens represented a large proportion of the labour market in Sweden and that in 1989 approximately 5,000 persons had been in the process of seeking asylum there. He wondered how their numbers affected such persons' enjoyment of human rights, what difficulties the situation had created for the Government, and how it was solving them.

3. Mr. CORELL (Sweden), noting that Sweden had provided detailed information on the matter in its tenth periodic report to the Committee on the Elimination of Racial Discrimination two weeks earlier, acknowledged that problems sometimes arose from the encounter between different cultures. There were isolated instances of harassment by Swedes but the courts were vigilant. On the whole, the influx of immigrants was seen as a positive phenomenon.

4. Mr. LEMPERT (Sweden) said that a wide range of problems arose both during the asylum-seeking process itself and during the subsequent process of absorption of those granted asylum. The primary aim of all the steps taken by the Government - starting with introductory courses on Swedish society given to selected refugees in the refugee camps, the formulation of employment and education plans and the provision of information to schools - was to place aliens in jobs as soon as possible. The International Labour Board had been given government funding to help it achieve that goal, and the Ombudsman against Ethnic Discrimination also assisted with problems.

Liberty and security of the person (articles 9, 10 and 11 of the Covenant) (section III of the list of issues)

5. The CHAIRMAN read out section III of the list of issues concerning the third periodic report of Sweden, namely: (a) the results of the study on the application of the amendments to chapter 24 of the Code of Judicial Procedure concerning deprivation of liberty; (b) additional information on the conditions of compulsory care for alcoholics and drug abusers; (c) any departures from the provisions of the 1989 Aliens Act regarding the periods of time for pre-trial detention when applying the legislation on terrorism; (d) information on the enactment of the planned legislation to replace the Act on the Provision of Institutional Psychiatric Care, and the main features of such legislation; (e) the situation with respect to the implementation of the special provisions on the detention of aliens in the 1989 Aliens Act.

6. Mr. CORELL (Sweden), referring to section III (a), said that the report of the National Courts Administration issued in November 1989 had indicated that, prior to the amendment of the Code of Judicial Procedure (para. 84 of the report), slightly more than 50 per cent of cases of provisional detention had been examined by a judge within six days. Since the reform, the corresponding period had dropped to two days, with more than 90 per cent of all cases being examined within three days. The number of persons held in provisional detention had decreased by 6 per cent since the reform, although the number of suspects had actually increased, the possible explanation being that prosecutors, aware that their request for detention on remand was normally due the same day, were less likely to detain a suspect provisionally. The total time in detention, from the provisional decision until a judgement was reached, had decreased. In 1989, 62 per cent of cases had been settled within three weeks, as against 40 per cent in 1987, and only 12 per cent of cases had taken more than four weeks to settle as against 24 per cent in 1987. Speedier examination by a judge would seem to be a factor that strengthened the legal security of the individual.

7. The November 1989 report also showed that the number of decisions made by district court judges regarding detention on remand had increased by 29 per cent since the reform. Five per cent more of requests for such detention were being granted and detention on remand was being requested for a larger proportion of the provisionally detained suspects.

8. On the other hand, the report also indicated that a survey of judges, prosecutors, defence lawyers and policemen had shown that a considerable number of them (60 per cent of defence attorneys) felt that the quality of the investigative material available to the examining judge had deteriorated now that less time was available to prepare it, and that would seem to be a negative effect.

9. Mr. RUNDQVIST (Sweden), referring to section III (b) of the list of issues, said that the new Care of Alcoholics, Drug Abusers and Abusers of Volatile Solvents (Special Provisions) Act (para. 63 of the report) supplemented the Social Services Act and had the same goal: to preserve respect for the principles of self-determination and integrity. The prerequisites for compulsory care in connection with serious alcohol or drug abuse and the procedures for deciding on such treatment were described fully in paragraphs 64 to 67 of the report. The aim of compulsory care was to motivate the abuser so that he could be presumed capable of participating voluntarily in the treatment. Care was provided in special residential institutions run by county councils or municipalities and usually headed by a board of governors. Abusers requiring close supervision were sent to special institutions chosen by the National Board of Health and Welfare. Care began with hospital treatment in all cases where that was called for. The consultant of the hospital unit concerned ensured that the social welfare committee or the person in charge of the care institution was informed immediately if the abuser wished to leave the hospital, and the consultant could issue an order to prevent his leaving during the time needed to transfer him to an institution. The person in charge of the institution kept the social welfare committee constantly informed of the progress of the treatment and consulted the committee on important matters. He or she also issued the departure order when the patient was ready to

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leave the institution for some other form of care such as family care, and the social welfare committee made the necessary arrangements. The person in charge could also order the patient back to the institution when other care was no longer feasible. Before such other care began, the social welfare committee, in consultation with the patient and with the person in charge of the institution, drew up a plan for continuing care. If a patient had remained under institutional care for three months, the person in charge must report to the board of governors on the course of the care. The social welfare committee was responsible for making adequate post-care arrangements in terms of housing, employment, education, and continuing support to prevent a resumption of drug or alcohol abuse.

10. The new legislation specified permissible control measures such as body searches, superficial medical examination, and the inspection of incoming mail and packages, from which objects could be confiscated and at times destroyed or sold. Decisions to do so could be brought before the administrative courts.

11. The 1988 Act had expanded the provision of compulsory care because investigations had revealed a sharp rise in drug and alcohol abuse in the 1980s among the socially disadvantaged, and rising death rates among abusers. It amended the Social Services Act to clarify the responsibilities of social welfare committees and amended the 1981 Care of Alcoholics and Drug Abusers Act to include care at a stage when symptoms were less acute, so that an individual could be treated before his condition deteriorated too far. The amendments were aimed at helping borderline young abusers in particular. Under the new legislation, obvious negative social acts of abuse had to be taken into account when a court decided on admission to compulsory care.

12. Since the new legislation had come into effect, the number of persons under compulsory care had risen from approximately 350 in 1988 to approximately 750 in 1989, decisions on admission to compulsory care had risen from 15,000 to 16,000, and the average period of care had increased from approximately 75 days to approximately 130 days.

13. Mr. LEMPERT (Sweden), referring to section III (c) of the list of issues, said that the time-limits for pre-trial detention were the same in the 1989 Act on Terrorists as in the 1989 Aliens Act, namely, detention for 14 days in the first instance, with the possibility of requesting a decision on further detention provided there were strong grounds and after a hearing of the matter.

14. With reference to section III (e) of the list of issues, the new legislation on the detention of aliens had entered into force on 1 July 1990.

15. Mr. RUNDQVIST (Sweden) said that the new legislation on compulsory psychiatric care referred to in paragraph 68 of the report was being considered in Parliament, with a decision expected in late May 1991. The main aim of the bill was to adapt the law to the evolution of psychiatry, which had for some time favoured out-patient treatment and treatment at psychiatric clinics in ordinary hospitals. The bill would limit compulsory care more strictly, in order to strengthen the

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patient's capacity for independent living and for voluntarily continuing with treatment and support. It further regulated compulsory control measures such as the use of restraints, isolation, body searches or the inspection of mail. For instance, letters to or from a patient could no longer be inspected, although packages could. One important amendment established legal time-limits for periods of psychiatric care and ensured greater judicial control by making court proceedings mandatory after an initial period of care. As a rule, the patient was provided with official counsel. He also was normally assisted by a support person throughout his period of care.

16. The rules for mentally disturbed offenders had also been amended, although the changes were not as radical as those recommended by a 1984 government committee. The main changes involved court supervision of cases involving patients who had committed serious crimes or posed a threat of violence to others. Further information on the question could be included in Sweden's next report.

17. Mr. MAVROMMATIS, complimenting the Swedish delegation on the calibre of their replies, asked for clarification regarding compulsory care for alcohol or drug abusers. He noted that there had been an increase in both the number of persons confined under compulsory treatment and the amount of time spent in treatment, and was concerned that there might not be sufficient safeguards against abuse. For instance, could the six-month period of compulsory care (para. 64 of the report) be extended?

18. He was also wary of the idea of having immediate care orders (para. 67 of the report) issued by the police. He wondered whether the "police authority" referred to was a police board, and whether such immediate care orders could be challenged.

19. Regarding the justifications for a detention order (para. 81 of the report), he was concerned that making "reasonable suspicion" the criterion, rather than "probable cause" or "reasonable grounds", might open the way to a situation where the justification of a detention order was not really tested . He would like clarification as to the difference between the three terms and as to how the procedure worked in practice.

20. With regard to article 9 (4) of the Covenant, it would be interesting to know what reasons there could be, other than criminal charges, for detaining a citizen as described in paragraph 87 of the report. In connection with the same paragraph, it was not clear to him what kind of body could exist, other than a commission composed in accordance with the law and presided over by a judge.

21. He would welcome an explanation as to why an alien, as opposed to a citizen, could be detained for up to three days after having been taken into custody (para. 94 of the report).

22. He failed to see how it could ever be in the interests of a juvenile offender to be placed together with adult offenders, as paragraph 104 of the report maintained and would appreciate clarification of that point.

(Mr. Mavrommatis)

23. Lastly, he asked whether there were any cases of imprisonment on grounds other than an offence or a crime, such as contempt of court, failure to obey a court order, or failure to pay a fine or fulfil a civil court payment order.

24. Mrs. HIGGINS said that she had listened to the report with great interest, particularly where it dealt with bail, an area where she had had concerns in the past about the practice of the Nordic countries. Turning to paragraph 81 of the report, she felt that the distinction between "reasonable grounds" and "probable cause" did not give rise to difficulties in terms of article 9 of the Covenant, as that article referred specifically to arbitrary detention. She had a number of other concerns, however, and would like further information on what was meant by "other prerequisites for detention on remand". She wondered whether that referred to the danger of flight by the suspect, or of tampering with witnesses or evidence.

25. With reference to the same paragraph, she wished to know for what length of time a court might authorize a prolongation of detention on remand and whether such prolongation could be followed by a further prolongation. She also wished to know by what point in time charges had to be brought, bearing in mind the disturbing case in the past where detainees had been held in solitary confinement for 100 days before charges had been brought. She also asked at what point a person held for inquiry for a maximum of six hours (and under extraordinary circumstances for an additional six hours) would have access to a lawyer (para. 83) and when a child under inquiry would have access to an adult.

26. Turning to the new legislation on psychiatric treatment, she wished to know at what point recourse could be had to the courts. She wondered whether it was within four weeks, since that was the limit on compulsory treatment. If her supposition was correct, she also wondered whether that created a problem in the context of the courts' obligation to decide without delay on the lawfulness of detention. She also asked what was meant by the phrase "as a rule" in the answer given on the appointment of official counsel.

27. Mr. FODOR said that while the report was excellent both in substance and in form, he wished to make one minor comment regarding form, namely, that paragraph 53, instead of giving information, simply referred to a different report to a different body in which such information was to be found. He did not think that was appropriate in a report to the Human Rights Committee, which was an independent treaty-monitoring body. Referring to paragraph 86 of the report, on supervision as an alternative to detention on remand, he sought information on any other cases in which detention on remand might be applicable; on the occasions when the authorities should, and when they might, apply supervision; and on the requirements for supervision.

28. Turning to paragraph 87, he asked what reasons there might be other than criminal charges for a citizen to be taken into custody, and why it had been deemed necessary to establish special commissions.

29. Mr. SADI, referring to the earlier statement that it had been the experience of Sweden that prompt trials deprived both the prosecution and the defence of time to prepare their cases, wondered why the judicial authority did not then resort to the granting of bail, which would allow more time for preparation.

30. He had the impression that aliens received a lower standard of justice than Swedes, in that they could be held in detention for longer periods. As the Covenant made no mention of such a difference in treatment of citizens and aliens, he wondered whether the discrepancy could be removed.

31. Turning to the issue of compulsory care and the fact that drug-addicted minors could be committed to compulsory care by their parents, he asked whether an adult could also be forced to seek such treatment.

32. Mr. LALLAH said he found it disturbing that the decision to commit a person to compulsory care was entirely in the hands of the police, and did not have to be justified to the courts. He wished to know how often a compulsory care order could be renewed. Since the consumption of alcohol was not in itself a crime, he found it disturbing that it should be left to the police to decide how much use constituted abuse.

33. Mr. CORELL (Sweden), responding to the question put by Mr. Mavrommatis regarding compulsory care and his concern about the adequacy of safeguards, explained that the limit for compulsory care was six months and could not be exceeded. Furthermore, all compulsory care orders were subject to examination by the courts.

34. With regard to the question of compulsory care orders being in the hands of the police, he reminded the meeting that the moment when a decision on compulsory care had to be made was often very dramatic, in that, for example, the potential patient was a threat to himself or those around him. In addition, any compulsory care order had to be reported to an administrative court within four days.

35. On the use of the term "reasonable suspicion" to replace "probable cause" or "reasonable grounds", he explained that there had been considerable discussion in Parliament on whether easing the level of proof required might be a reasonable way of solving a problem that had been encountered, namely, that if there was very little time in which to prepare a request for detention on remand, there might be very little material for the prosecution to offer the judge. The statistics showed, however, that the change of language had not caused major differences in the number of detentions on remand, but only in the speed with which decisions were taken. There was, admittedly, a risk of abuse and the Swedish Parliament would keep the application of the provision under review.

36. In response to the question on the addition of a provision to chapter 2, section 8, of the Constitution, he said that Sweden felt that, in the light of its international commitments, a person deprived of his or her liberty should always have recourse to the courts. Since such issues were dealt with by ordinary legislation, at a level lower than the Constitution, the risk could not be taken that the legislature might omit to lay down that right in the general law. The

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right was therefore laid down in the Constitution, ensuring that if deprivation of liberty occurred without there being an indication in law as to where the case was to be considered, it could always be considered under the constitutional provision, presumably in the court of first instance in Stockholm.

37. Mr. Aguilar, Vice-Chairman, took the Chair.

38. Turning to the question by Mr. Mavrommatis as to what kind of other body might take decisions on compulsory psychiatric care, he explained that, in the past, decisions on commitment to compulsory care had sometimes been taken by a board specially constituted for the purpose. Under the law, the chairman of such a board had to be a judge, and in consequence the boards had been considered of equal status with the courts. Nowadays, however, such decisions were taken by the administrative courts of first instance.

39. Mr. LEMPERT (Sweden), turning to the question of the three-day period referred to in paragraph 94 of the report, explained that certain prerequisites had to be met in alien matters for legal counsel to be provided in the first three days. For instance, the complexity and gravity of the situation were determining factors. Once an alien had been in custody for three days, however, he was automatically entitled to legal counsel. Such aliens were very often in the country illegally anyway. The three-day waiting period was a maximum, and sometimes the period of custody was no longer than the time required to execute an expulsion order. However, legal counsel was always provided in such cases.

40. Mr. CORELL (Sweden), referring to the placement of young offenders, concerning which Sweden had made a reservation (para. 104), said that there were in fact extremely few children behind bars in Sweden. There had been juvenile prisons in the past, but they had not been considered beneficial and had been abolished. Furthermore, it would be a mistake to conceive of a prison as housing numerous inmates crowded together in cells. In Sweden, there was no more than one person to a cell, cells had a radio and sometimes a television, and so on. Whether it would actually be to the advantage of a young person to be placed with adult prisoners was, he felt, a question which could be entrusted to those actually engaged in the care of prisoners. It must also be remembered that some prisons contained perfectly respectable people who were serving a sentence only because they had driven a car after drinking too much alcohol. Such persons might even serve as an example to younger prisoners.

41. Turning to the questions which Mrs. Higgins had raised concerning bail, he recalled that the Scandinavian countries in general did not view bail very positively. It was felt that since very few people would have sufficient money to pay bail, institution of a bail system would be an infringement of citizens' equality before the courts. As for the "other prerequisites" referred to in paragraph 81, they were enumerated in chapter 24, section 1, of the Swedish Code of Judicial Procedure. As Mrs. Higgins had rightly conjectured, those prerequisites included the risks that the prisoner might abscond, might destroy evidence or otherwise hamper the investigation, or might continue the criminal activity.

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Detention on remand was also authorized if the crime in question carried a statutory minimum penalty of two years' imprisonment.

42. With regard to the prolongation of detention on remand, the general rule was that, although possible, it should be avoided. The deadline for presentation of charges by the prosecution was specified by the judge ordering the detention on remand, but the usual deadline was two weeks.

43. With regard to the "disturbing case" to which Mrs. Higgins had referred, that had been a difficult case involving very special circumstances, with implications for two other countries. There had been a danger that the accused might destroy evidence, and that danger had justified the solitary confinement. Under normal circumstances, however, the regulations on detention on remand provided specifically that if a prisoner wished to, he was free to mingle with other prisoners in the same place of detention.

44. With regard to the question on consideration of compulsory care orders by the courts, the authorities had to bring the whole matter before the court within four weeks, but the patient had a right to raise it before the court immediately.

45. As a rule, official counsel was always available to patients. However, a patient might not wish to avail himself of counsel or might choose to be represented by a support person. The situation was much more difficult than in the courts, since a patient who might not have committed a crime was nevertheless deprived of his or her liberty.

46. He acknowledged that the references which Sweden had made to other documents in its third periodic report might complicate the Committee's work. Such references had been made in order to save space and avoid repeating information already available in other reports. Perhaps the Secretariat would be able to help members of the Committee obtain the necessary documents. Sweden was more than willing to follow the Committee's advice regarding the preparation of future reports.

47. Other situations in which a person could be remanded in custody involved children, the mentally ill and persons who abused drugs or alcohol. Another case was that of aliens who had entered Sweden illegally and were not allowed to remain in the country. All those situations were dealt with under Swedish law, and decisions could always be examined by a court.

48. Paragraph 81 of Sweden's third periodic report dealt exclusively with pre-trial situations. In his previous comments, he had referred only to a pre-trial situation in which the prosecutor presented a request for detention on remand together with information received from the police. Because of the short time-limit, the information available was not as substantial as it had previously been. However, in a trial situation, the person was on remand and the prosecutor was required to present his material and his indictment to the court. If the prosecutor was unable to do so within the prescribed time-limit, he would have to ask the court to authorize a prolongation of the detention on remand; that would

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give him more time to obtain additional information and provide the court with more substantial material for the trial.

49. In Swedish society, bail would be very difficult to institute. Above all, it would give rise to objections on the part of poor people who were unable to pay it. That was why the Swedish legal system provided other rules whereby a person could accept a ban on leaving his or her home town. If the person agreed, he or she might not be subject to detention on remand but might simply have to remain in the town and report to the police at certain intervals.

50. The only difference in the treatment of Swedes and aliens with respect to detention on remand arose when an alien had no place of residence in Sweden. For example, a tourist who came to Sweden and committed a serious crime might be subject to detention on remand. The cases to which Mr. Lempert had referred did not involve persons suspected of committing a crime, but attempts by aliens to enter Sweden unlawfully. In such situations, aliens had to be taken into custody to prevent them from going into hiding.

51. There were situations in which adults might be subject to compulsory care. One such situation would be when a mentally ill person was deemed to pose an imminent threat to himself or others. Other situations might involve persons who, as a result of their abuse of drugs or alcohol, had developed a serious disease and might die if they did not receive urgent medical care. Since all such cases were examined thoroughly by the administrative courts, that kind of deprivation of liberty could not be used for other purposes. If the police were involved in such cases, the detained person could always bring the matter before a court. Otherwise, the authorities must bring the case before a court within four weeks. In cases where the police had to apprehend individuals and take them to hospital, doctors were required to prepare a certificate to be presented to the hospital where the apprehended person was to be detained. In such cases, a four-day rule applied.

Right to a fair trial (article 14 of the Covenant) (section IV of the list of issues)

52. The CHAIRMAN read out section IV of the list of issues concerning the third periodic report of Sweden, namely: the procedure and criteria for the selection of professional and lay judges who served in the general courts, as well as their role in reaching decisions.

53. Mr. CORELL (Sweden) said that, in Sweden, being a professional judge entailed holding a State office. When persons were considered for that office, only such objective factors as merit and competence were considered. In that context, merit meant familiarity with the demands and routines of the office. Competence meant general and special insights and knowledge which would be valuable to the person holding the office; it included study background, education and suitability for the office in question.

(Mr. Corell, Sweden)

54. Permanent judges were appointed by the Government. Judges at the highest level did not apply for office but were asked to take office. Other positions as permanent judges were applied for. A special board prepared the applications and submitted a proposal to the Government. As of 1 July 1990, the applicant's competence took priority over his or her merit.

55. According to chapter 4 of the Code of Judicial Procedure, a professional judge must be a Swedish national and must also have a law degree. A person in a state of bankruptcy could not serve as a judge.

56. Any person aspiring to become a judge applied for a position as a trainee in a court of appeal or an administrative court of appeal. Prior to that, the person had to have obtained a law degree and served a two-year period of legal internship in a lower court. Only persons who could be expected to pass the trial period were accepted as trainees. There were three compulsory elements in the training to become a permanent judge: the trainee period in a court of appeal for about nine months, followed by practice as a judge in a lower court for about a year and, finally, training in the court of appeal. The person was then appointed associate judge of the court of appeal and was eligible to apply for office as a permanent judge. Normally, before becoming a permanent judge, the judge-to-be held other positions such as defence attorney, prosecutor or corporate lawyer.

57. Lay judges were chosen by means of elections. Those who served in the general courts were elected by the municipal or city councils, which in turn were elected through general elections. Other lay judges were elected by county councils. Efforts were made to ensure that the composition of the lay judges in a court was representative with regard to age, sex and occupation.

58. Lay judges were elected for three years. Every Swedish national who was not a minor or in a state comparable to legal incapacity (Sweden had abolished the concept of legal incapacity) could be elected as a lay judge for the municipality or the county in which he or she lived. Certain categories of professionals, such as professional judges and prosecutors, could not serve as lay judges.

59. With regard to their role in reaching decisions, professional and lay judges each had their own vote. In criminal proceedings, for example, a vote was taken when there were differences of opinion with respect to what decision should be reached. The professional judge who had served the shortest time voiced his or her opinion first. If lay judges participated in the court, they voiced their opinions last. Where there was a vote, the decision taken corresponded to the opinion which obtained more than half of the votes. If two different opinions each obtained 50 per cent of the votes, the more lenient opinion prevailed. If there was no such opinion, the one which received half the votes including the chairman's prevailed.

60. Mr. ANDO requested information about the procedure for promoting judges and wished to know whether the judiciary could play any role in appointing judges.

61. Mrs. HIGGINS wished to know what percentage of the judiciary comprised people who had previously been in government service in the broadest sense of the term.

62. The Chairman resumed the Chair.

63. Mr. CORELL (Sweden) said that, in Sweden, there were a number of safeguards against the Government's misuse of its power to appoint judges. If the Government appointed judges who did not fulfil their obligations or were not able to hold service or did not merit their service, there would be signals from the mass media, the general public and other judges. The Government, moreover, always sought to appoint the most suitable persons for such positions.

64. Normally, persons of a similar age group and with similar merits applied for a certain post. Vacancies involving the post of circuit judge were dealt with by a board which submitted proposals to the Government regarding the most suitable candidates for the post. However, most permanent judges in Sweden were appointed by the Government, since the Government wished to ascertain that the persons filling those posts had sufficient training and experience and had a general overview of the Swedish legal system. Because of the qualifications required, only a rather limited group of candidates could be considered. In future, there was likely to be a more open attitude towards the recruitment of judges from quarters other than those which traditionally formed the basis for the appointment of chief justices in Sweden. Judges who had had experience in government office might be even more aware of the importance of making a clear distinction between the executive and the judiciary.

65. Mr. LALLAH asked whether there were any judges or legal advisers in Sweden who were not ethnic Swedes. He also wished to know how many women tended to join the legal profession.

66. Mr. ANDO asked whether there were any restrictions on the nationality of lawyers practising in Sweden.

67. Mr. DIMITRIJEVIĆ noted that, in Sweden, there were no strict rules regarding the evidence which could be submitted to a court. He inquired whether there was a way to prevent the submission of evidence which violated the right to privacy. For instance, what would happen if a telephone had been tapped without the judge's permission and the recorded telephone conversation was submitted as evidence to the court?

68. If a defendant's statement in court contradicted his earlier statement to the police, the defendant was obliged to explain why he had changed his statement. He wished to know whether the defendant's statement to the police would be recognized by the court in cases where the court was not satisfied with the defendant's reasons for changing his statement. Lastly, he requested an explanation of the term "unnecessary evidence" in paragraph 182 of the report.

69. Mr. LALLAH asked whether the court's refusal to accept the defendant's reasons for changing his statement would be a violation of article 14, paragraph 3 (g), of

the Covenant, which stated that the accused should not be compelled to testify against himself or to confess guilt.

70. Mr. CORELL (Sweden), replying to Mr. Lallah, said that, although he had no statistics, there were many women in the legal profession in Sweden. Women accounted for 50 per cent of all applicants for trainee posts in courts of appeal. In future, there would be increasing opportunities for women in the legal profession. Concerning ethnic origin, the current Minister of Justice was in fact a refugee from the Baltic States.

71. According to chapter 8, section 2 (1), of the Code of Judicial Procedure, all lawyers practising in Sweden must be Swedish citizens. However, a person appearing as counsel before a court did not have to be a member of the Swedish Bar Association. There were, nevertheless, certain limitations on the right of such persons to appear before the courts; for example, they would not be accepted as official counsel in criminal proceedings. The Swedish Bar Association could make derogations from the rule that all lawyers must be Swedish citizens.

72. The basic rule on freedom of evidence was that a court freely assessed the evidence presented to it. There was a problem, however, with certain kinds of information which might have been acquired in a non-legal manner, and there had been a recent investigation in that regard with the details of which he was not familiar. With the Committee's permission, he would inform himself of those details and return to the subject later.

73. As to cases where a person might be required to explain why he was telling a story in court that differed from the one he told the police, and whether that requirement was in violation of article 14, paragraph 3 (g), of the Covenant, he pointed out that in Sweden no one was compelled to testify anything and there was no requirement, as there was in some countries, that a person appearing in court swear an oath to tell the truth. It was for the courts themselves to determine the truth, and it was only natural that a court should ask a defendant why he had changed his story, for its task was to compare his statements with the evidence of witnesses and other exhibits. Sometimes statements made to the police might not have been told freely, or a defendant who had told the police the truth might subsequently decide that that would not serve him well in court.

74. It was also up to the court to decide what kind of evidence was to be presented, and to decide whether the evidence submitted was necessary. A court's decision to bar evidence could be appealed when appealing against a judgement of a court of first instance, and if a court of second instance found that the court of first instance should have accepted certain evidence, it could send the case back to it.

75. In Sweden, confession was not sufficient to justify a verdict against an accused person. It had to be substantiated by facts or circumstantial evidence.

Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section V of the list of issues)

76. The CHAIRMAN read out section V of the list of issues concerning the third periodic report of Sweden, namely: (a) information concerning the findings and proposals of the National Council for Crime Prevention based on its review of experience to date in implementing legislation concerning restraining orders, and whether any new measures have been adopted to make the legislation more effective; (b) clarification, with respect to paragraph 147 of the report, as to why no possibilities of appeal exist in the case of expulsion on grounds of national security and presumed terrorist activities; (c) the review by the Parliamentary Committee of the provisions of section 3 of the Act on Terrorists and, if completed, the salient points of its report; and (d) clarification, in respect of paragraphs 140 and 143 of the report, of the appeals procedure against expulsion available in cases of refusal of entry or expulsion on grounds of an expired residence permit.

77. Mr. CORELL (Sweden) said with respect to section V (a) of the list of issues that restraining orders were another means of protecting individuals who had already been the victims of crime or who were being pursued and harassed by others. The National Council for Crime Prevention, which had reported in June 1989 on the first six months of application of the Act on Restraining Orders, had concluded that no amendments to the Act or its application were called for. During those first six months, restraining orders had been issued in 84 cases and 37 requests for restraining orders had been rejected; a handful of people had been convicted for not abiding by restraining orders in the period concerned. The Council's report had been handed over to the Commission against Violence established in November 1989, which had delivered its final report in November 1990 without suggesting any amendments to the Act. However, that should be seen in the light of the fact that in April 1990 there had been some amendments to it, to the effect that a person who failed to abide by the prohibition against visiting or contacting another individual might now be sentenced to one year's imprisonment instead of six months.

78. Mr. LEMPERT (Sweden), dealing with sections V (b), (c) and (d) of the list of issues, said that although new legislation was pending in the area of expulsion on grounds of national security and presumed terrorist activities, no real changes were being suggested for section 3 of the Act on Terrorists, for the same reason that there was no possibility of appeal in cases of expulsion of presumed terrorists. In such legislation, a balance had to be struck between the interest of effective measures and the interest of guaranteeing the individual the best possible security when it came to defending his rights. The existing legislation, which had been in force since 1975, was extremely limited and had concerned only some 20 people.

79. A committee set up to consider new legislation in that area had looked at how other countries solved the problem: most solved it in a more or less clandestine way with no genuine procedures, and none solved it in a manner which gave decision-making to the courts. The proposed new legislation would give the courts

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a more prominent role, although not the right to make a decision. The proposed expulsion of a presumed terrorist could be submitted to a court for an opinion as to whether the evidence was sufficient and the criteria for expulsion had been met, but ultimately such matters concerned national security and foreign policy and had to be left to the Government to decide, thereby ruling out the possibility of appeal. Only the Government could decide whether a group was to be regarded as a terrorist group or as a bona fide freedom-fighting organization.

80. With the exception of expulsions under the Act on Terrorists, all expulsions could be appealed against, either to the Government, in which event the case could be tried in two instances, or to the Central Bureau of Immigration if the expulsion order had been decided upon by the police. Where an appeal related to the asylum process or to the withdrawal of a right, for example to a residence permit, the appeal was to the highest instance, the Government. A committee set up by the Government to look into the procedure had suggested the establishment of a special, independent board to consider appeals, and the matter would probably be coming before the Swedish Parliament in the near future.

81. Mrs. HIGGINS said that the reason given for the absence of the possibility of appeal by a presumed terrorist against expulsion on grounds of national security - that a balance had to be struck between the interest of effective measures and the interest of guaranteeing the individual the best possible security when it came to defending his rights - was not the reason given in article 13 of the Covenant, which stipulated that normally the case should be reviewable by a competent authority unless compelling reasons of national security required otherwise. Each individual case, therefore, had to be investigated to see whether there were compelling reasons of national security that made it non-reviewable. The suggestion that simply because a person was in the category of presumed terrorist, his continued presence in the country was never compatible with national security and his case was non-reviewable was clearly contrary to the wording of article 13 of the Covenant.

82. Turning to the case of the Turkish citizens of Kurdish descent (paras. 123-133), she sought clarification as to the length of time before their town arrest could be challenged, how long it took to go before the District Court of Stockholm, and how long before it went before the Supreme Court. If the Supreme Court had ruled that town arrest was not challengeable in the courts and was a matter properly for Government determination, the possibility arose of limitations of the rights under the Covenant that were not subject to judicial review. Those Kurds who had been released had presumably not been released as a result of a court decision. It was her understanding that under new legislation the category of town arrest was to be abolished, but that there were other, more limited, methods of control of those who were regarded as potential terrorists, involving having to report once a week to the police and the possibility of telephone-tapping and searches. That being so, it was difficult to understand why the normal rules that permitted telephone-tapping and searches in restricted circumstances were not applicable; if it were the case that mere potentiality of crime was not enough to permit such methods of control, problems were raised in respect of an individual's

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liberties. Non-reviewable designation by a Government as a potential terrorist meant that one's liberties were intruded upon as a consequence of that designation, and it would be comforting to know that it operated only with respect to persons who would otherwise have had to be expelled back to their country of origin. She asked whether the Swedish delegation would be in a position to provide a guarantee that, if that were not the case, the intrusion upon liberties as a result of designation by the Government as a potential terrorist would not operate under the new Act.

83. Mr. MYULLERSON asked, with respect to paragraph 124 of the report, whether there had been any developments in the case of the Turkish citizens of Kurdish descent since the report had been drafted and whether, with respect to paragraph 127, the reversal of two of the expulsion orders in May 1989 had meant exemption from restrictions.

84. Mr. LEMPERT (Sweden) said that when dealing with the absence of the possibility of appeal against expulsion of presumed terrorists, he had spoken not only of the need to strike a balance in the relevant legislation between the interest of effective measures and the interest of guaranteeing the individual the best possible security when it came to defending his rights, but also of the fact that since the legislation had come into force in 1975 it had affected only a very small group of people - some 20 individuals who, in the view of the Swedish Government, represented a threat to national security.

85. As for the presumed terrorists connected to the PKK organization, the Government of Sweden deemed them to be potential terrorists, and therefore extremely dangerous to Swedish society, in view of two murders committed on Swedish territory and suspicion of involvement in other actions. There was, however, some protection even for presumed terrorists: they could not be expelled to face torture, death or similar circumstances. Of the nine people originally in the group, one was serving a prison sentence and the expulsion orders on two others had been waived; the two were now residing lawfully in Sweden, having been joined by their families. With respect to the remaining six, the control method of town, or more accurately municipality, arrest had been lifted, and they now had to report once a week to the police. It had been suggested to the Government that the role of the courts in the area concerned be strengthened, and if any of the surveillance measures ordered in respect of a presumed terrorist remained after three years, it would be for the courts alone to decide whether or not the prerequisites still existed for that surveillance to continue; the Government would in any event during that period have periodically reviewed the need for surveillance.

86. Turning to the question as to why the normal rules permitting telephone-tapping and searches in restricted circumstances could not be extended to presumed terrorists, he said that the situation represented by such cases was not a normal one. If a presumed terrorist was allowed to remain in the country for humanitarian reasons, the need for control might still exist even if the person concerned had not yet committed a criminal act.

87. Mr. CORELL (Sweden) said that even the most open of societies sometimes found themselves obliged to take measures they did not want to take, in order to deal with a situation to which they could see no other solution. Sweden did not appreciate people to whom it had given sanctuary committing murder on its streets.

The meeting rose at 1 p.m.

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Forty-first session

SUMMARY RECORD OF THE 1044th MEETING

Held at Headquarters, New York,
on Thursday, 28 March 1991, at 3 p.m.

Chairman: Mr. POCAR

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Sweden (CCPR/C/58/Add.7) (continued)

1. At the invitation of the Chairman, Mr. Corell, Mr. Lempert and Mr. Rundquist (Sweden) took places at the Committee table.

Right to privacy (article 17 of the Covenant) (section VI of the list of issues)

2. The CHAIRMAN read out section VI of the list of issues concerning the third periodic report of Sweden, dealing with: (a) whether a report had been issued by the Parliamentary Committee which had been looking into questions relating to the registration of personal information, including information relating to political opinion, and, if so, what the main conclusions and recommendations had been (para. 210 of the report); (b) whether any action had been taken on the Data and Publicity Commission's proposal aimed at strengthening the protection of personal information contained in computerized files used in the field supervised by the Central Health Board (para. 212 of the report); (c) the substance of the proposed legislation aimed at prohibiting the sale of personal information without the permission of Parliament and of the proposals for regulating and limiting the use of personal identification numbers (PINs) and whether any action had been taken in that regard; (d) remedies available in case of interference with the privacy of citizens by means of data banks and electronic surveillance.

3. Mr. CORELL (Sweden), referring to section VI (a), said that the Parliamentary Committee had delivered its report in June 1990. Its major recommendations were the following. The term "personnel control" or "staff vetting" referred to the gathering of information from police files in order to ascertain an individual's reliability from the point of view of national security, in the case of candidates for posts which were important to the national defence. The Parliamentary Committee had proposed: first, that the system should be regulated by an act of Parliament, instead of by an ordinance issued by the Government; secondly, that the proposed system should encompass not only individuals who might be privy to secret information, but also persons who were important to national security, defence and protection against terrorism because of their access to areas which could be the target of sabotage; thirdly, that the total number of persons subject to control should be decreased and that control should focus on the most sensitive positions; fourthly, that it should be easier for an individual subject to control to have access to the information concerning him; and fifthly, that decisions as to which information concerning a person was to be released should, in the future, be taken by an independent board and not by the national police board. The Government intended to submit a bill to Parliament on the subject in the next few months.

4. Referring to section VI (b), he said that the Data and Publicity Commission's report had resulted in a bill being submitted to Parliament to regulate the flow of

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information within municipal and county health care systems for the purposes of statistics, research and administration. The draft legislation proposed that an exchange of information could take place only if there was no reason to believe that the individual concerned, or any of his close relatives, would be harmed by its release. It also proposed new rules for the transfer of information from municipalities and county councils to the national health and welfare board.

5. Referring to section VI (c), he said that the Data and Publicity Commission had proposed that Parliament should give permission for the sale of personal information. Under the Constitution, however, authorities could not assume functions other than those assigned to them by Parliament or the executive branch. Accordingly, the possibilities for authorities to sell personal information from computerized files were very limited. Furthermore, the Data Act provided that information which had been gathered for a certain purpose could not be used for other purposes except as authorized by law or agreed to by the individual concerned. His Government had taken the position that a proper application of the existing provisions ruled out the sale of personal information except as specifically authorized by law or decided on by the Government, and had therefore proposed that the Data Act should be clarified in order to avoid any misunderstanding with regard to the existing regulations.

6. As to PINs, the proposal submitted by the Data and Publicity Commission and adopted by his Government entailed an amendment to the Data Act, stating that PINs could be included in a file only under certain circumstances, such as when careful identification of the registered person was necessary. The keeper of the file was required to show restraint in the use of PINs, and the Data Inspectorate would supervise their use. In addition, PINs would not normally be used in computer printouts.

7. Turning to section VI (d), he said that the Data Act contained provisions to ensure that personal information was correct and complete. If an individual alleged that a computerized file contained incorrect information on him, he was entitled to know what steps had been taken in response to his complaint. If an individual was harmed by incorrect or misleading information in a file, the keeper of the file was liable to pay damages. The Data Inspectorate was responsible for supervision, could run the programme itself, and could also revoke the permit to run the file. If an individual did not abide by the provisions of the Data Act or the decisions of the Inspectorate, he could be sentenced to a fine or a prison term of up to one year.

8. With regard to electronic surveillance, legislation provided that the county administrative board must give permission for the placement of surveillance cameras which monitored areas accessible to the general public. Signs must be posted to alert the public to the presence of the cameras. A fine or a prison term of up to one year could be imposed for failure to comply.

9. With regard to illegal wire tapping, it was punishable under chapter IV, sections 8 and 8 (a) of the Penal Code, by fines or imprisonment of up to two years.

Freedom of religion and expression: prohibition of propaganda for war and of incitement to national, racial or religious hatred (articles 18, 19 and 20 of the Covenant) (section VII of the list of issues)

10. The CHAIRMAN read out section VII of the list of issues concerning the third periodic report of Sweden, dealing with: (a) the current status and prospects in respect of the debate on the separation of the Church from the State (para. 235 of the report); (b) the current status of plans for legislative action on proposals adopted by the Commission on Freedom of Expression (para. 237 of the report); (c) whether there had been any prosecutions under chapter 16, section 8, of the Penal Code, as amended, relating to the dissemination of racist statements (para. 245 of the report); (d) the action taken on the amendments envisaged for the Ordinance on Cinema Performances (para. 243 of the report).

11. Mr. CORELL (Sweden), referring to section VII (a), said that there had been an ongoing debate on that topic for many years, with numerous proposals being made. The ties between the Church and the State in his country were centuries old, which was why the question had not yet been resolved. During the previous decade, the legislation concerning the Church of Sweden had been thoroughly revised. As a result, the Church, to which more than 90 per cent of the population belonged, had acquired a structure which enabled it to take decisions in most matters through representative bodies, not only at the parish level, but also at the national and regional levels. At the request of the General Senate of the Church, his Government had appointed a committee to propose solutions to the economic and legal problems which might arise if the current relation between the Church and the State was more radically altered. When the Committee's report was published at the end of 1991, there would undoubtedly be renewed discussion of the possible separation of the Church from the State.

12. Referring to section VII (b), he said that a new bill on freedom of expression was currently before Parliament, which in essence would extend the same protection to new electronic media as had already been extended to print media.

13. Mr. LEMPERT (Sweden), referring to section VII (c), said that there had been five or six cases in 1990 in which individuals had been found guilty of breaches of chapter 16, section 8, in the new wording, and had been sentenced to prison terms.

14. Mr. CORELL (Sweden), referring to section VII (d), said that new legislation concerning freedom of performances had been enacted in 1990 and brought into force in 1991. Censorship prevailed as far as public cinematic performances were concerned, but it had not been extended to private video rentals. The problems which had arisen from the exploitation of video technology for the distribution of violent contents were being dealt with through intensified surveillance of the market and sharper penalties.

15. Mr. ANDO, referring to paragraph 239 of the report, asked for clarification concerning the term "formal grounds" and whether judicial review was available. He also asked whether the representative of Sweden could elaborate on the information given in paragraph 241.

16. Mr. CORELL (Sweden), replying to the question raised concerning paragraph 239, said that the retransmission of satellite services was free to the extent that such service could be deemed to be direct broadcasting; since that was the case with regard to most of the popular satellite services available in Sweden, the application of the Act on Local Cable Transmissions of 1986 was currently very limited. The legislation might have to be amended. The new Freedom of Expression Act related to that particular question, and further information would be included in the next periodic report. Replying to the question raised concerning paragraph 241, he said that the Ordinance on Cinema Performances had been amended and that the legislation which currently applied was the Examination and Control of Films and Video Films of 1990, which provided that appeals should be made to an administrative court.

Protection of the family (articles 23 and 24 of the Covenant) (section VIII of the list of issues)

17. The CHAIRMAN read out section VIII of the list of issues concerning the third periodic report of Sweden, namely, the status of the proposed bill to replace the Care of Young Persons Act (para. 273 of the report), and whether the new legislation, if enacted, would provide parents with increased access to their children.

18. Mr. RUNDQUIST (Sweden) said that since 1 July 1990 a new Act had been in force the provisions of which could be seen as safeguarding parents' rights. The criteria for the public care of children had been rendered more precise, and were based either on conditions at home or on the young person's behaviour. The text provided examples of the kind of behaviour contemplated in the legislation. The social welfare committees were requested to reconsider the question of continued care within a shorter period than before. The rules concerning prohibition on the removal of a child after a care order had been lifted had formerly been incorporated into the Social Services Act, but were currently incorporated into the Care of Young Persons Act, thus strengthening the legal safeguards.

19. If a decision to prohibit removal was taken, the social welfare committee was authorized to decide formally on the question of the parents' access to the child during the period of prohibition. Such a decision could be reviewed by the county administrative courts.

20. Mr. SADI said that in many countries there was an increasing battery of liberal legislation which, in his view, undermined the family unit by condoning cohabitation, either between persons of different sexes out of wedlock, or between persons of the same sex within a homosexual relationship. He asked whether Sweden had followed the pattern of those countries, and, if so, how such policies could be reconciled with the obligation to protect the family laid down in article 23 of the Covenant.

21. Mrs. HIGGINS said that her interpretation of article 23 of the Covenant in relation to the issues just mentioned would not be the same as that of the previous speaker. She also wished to know what provision had been made for the detention of

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immigrant children while the status of their parents was being investigated. If it was true that the children were sometimes held in prison, she would appreciate information concerning the number who had been held in a given year and whether it represented an increase.

22. Mr. RUNDQUIST (Sweden) said that his country's views concerning the rights of the child corresponded closely to those embodied in the Convention on that subject. The basis of its family policy was the conviction that the fundamental responsibility for children lay with the parents. Society could not and should not substitute for that role; it could, however, attempt to provide parents with the requisite support to ensure that the child received the care necessary for its development.

23. Mr. CORELL (Sweden), replying to the question raised by Mr. Sadi, said that Sweden was among the countries to which he had referred. The concept of family was not legally defined, and there were new rules in force which protected cohabitation. In that regard, Swedish legislators had been very responsive to public attitudes, although support for such legislation was not universal. If the Committee so wished, his delegation could elaborate further on the subject in its next report.

24. Mr. LEMPERT (Sweden) said that legislation in Sweden made provision for remand in custody of the children of asylum-seekers if it was evident that the children would conceal themselves in order to avoid an impending enforcement. In 1990 there had been some 30,000 asylum-seekers, and 260 children had been taken into custody. The normal practice, however, was not to separate the child from his or her legal guardian.

Rights of persons belonging to minorities (article 27 of the Covenant) (section IX of the list of issues)

25. The CHAIRMAN read out section IX of the list of issues concerning the third period report of Sweden, namely, whether any action had been taken to resolve the question raised in the main report submitted by the Governmental Commission on the Legal Position of the Samis (para. 290 of the report).

26. Mr. CORELL (Sweden) said that much more information on that issue would be provided in his country's next periodic report, since by that time the parliamentary bill resulting from the report of the Governmental Commission would have been prepared.

27. Mr. ANDO, referring to paragraph 291 of the third periodic report of Sweden, said that he would welcome more information on the provisions governing State funding of religious communities. He wondered whether Sweden had experienced any difficulties in reconciling the rights conferred under articles 26 and 27 of the Covenant with the traditional values of specific minorities, for example with regard to discrimination against women.

28. Mr. CORELL (Sweden) said that the provisions had only recently been adopted, and that it was therefore too early to evaluate the effects of their application. Where the rights of minorities were concerned, every effort was made to ensure that minorities were able to preserve their own cultural heritage, but the exercise of that right must be consonant with ordre public and Swedish legislation. For example, the practice of female circumcision was illegal in Sweden.

29. Mr. LALLAH said that, rather than trying to reconcile the exercise of rights under the Covenant with legislation and ordre public, the authorities should be concerned to maintain a proper balance between the rights themselves, which could sometimes be difficult to reconcile. He also thought that State funding of the established Church of Sweden might be construed as discriminatory.

30. Mrs. HIGGINS said that she agreed with Mr. Lallah regarding the need to preserve a balance between rights provided by the Covenant rather than strike a balance between those rights and the provisions of domestic legislation.

31. Mr. CORELL (Sweden) said that legislators in Sweden did in fact see the emphasis as being on reconciling rights arising from the Covenant, but that conflicts between those rights and domestic legislation did sometimes occur. With regard to State funding of the established Church, he said that the question must be seen in a historical perspective, and that it should be borne in mind that the Church had traditionally acted as a registrar of the Swedish people and therefore had both secular and pastoral functions. However, the whole question of Church-State relations was currently under review.

32. Mr. WAKO said that he would welcome clarification of the reasoning behind the Swedish Government's reservation to article 14 (7).

33. Mr. CORELL (Sweden) said that the reservation was intended to cover cases in which evidence had come to light, after a defendant had been convicted, indicating that he was in fact innocent, or in which subsequent evidence made it clear that a defendant had been wrongfully acquitted of a serious charge.

Liberty and security of the person (articles 9, 10 and 11 of the Covenant) (section III of the list of issues) (continued)

34. Mr. CORELL (Sweden) said, in reply to a question raised at the previous meeting by Mrs. Higgins, that the provisions on the time-limits for detention on remand could be found in chapter 24 of the Code of Judicial Procedure, and that, while such detention did not normally exceed three weeks, decisions were taken on a case-by-case basis, taking into account the gravity of the offence and the complexity of the issues involved.

Right to a fair trial (article 14 of the Covenant) (section IV of the list of issues) (continued)

35. Mr. CORELL (Sweden), replying to a question raised by Mr. Dimitrijević at the previous meeting, said that the Code of Judicial Procedure stipulated that it was

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for the courts to decide whether to accept or reject evidence which had been illegally acquired, and that, if the Court did admit such evidence, proceedings could be initiated against the person or persons who had acquired it.

36. Mr. LALLAH referred to the case in which an acquittal had been reversed because of new evidence adduced two days later. An innocent man could derive small comfort from the fact that his name would not be cleared in order to preserve the dignity of the judiciary. Indeed, the very purpose of article 14 (7) was to avoid double jeopardy. Moreover, an innocent person should not be found guilty by association because he was perceived to have ties to a suspect group - i.e., a terrorist group.

37. Mr. WAKO, referring to paragraph 201 of the report, reiterated that, essentially, he had wished to know whether an acquittal had been reversed after a new trial solely in order to prevent the credibility of the judicial system from being called into question.

38. Mr. CORELL (Sweden) clarified that the credibility of the judicial system was not the only issue. Rather, the thinking had been that the public might be alarmed to learn that guilty persons were at large. In fact, retrials occurred not because judges pronounced on the evidence incorrectly, but rather because the evidence had been insufficient the first time. He could not provide statistics on the number of acquittals which had been reversed. If Mr. Wako's interpretation was applied, paragraph 201 would indeed be more appropriately placed under article 14 (6), but, as the Swedish delegation had construed it, it could also come under article 14 (7).

39. The CHAIRMAN invited the members of the Committee to present their general comments on the third periodic report of Sweden.

40. Ms. CHANET praised the Swedish representative for giving clear and precise responses to the questions posed by Committee members and noted that Sweden had one of the most outstanding human rights records in the world. While the provisions of the Covenant were essentially covered by the Swedish Constitution or Swedish national law, articles 16 and 17 of the Constitution did not bar discrimination on grounds of language, political opinion, property, birth or other status in full conformity with article 2 (2) of the Covenant. That meant there was no constitutional remedy available to someone wishing to protest against those specific violations. She was concerned about the situation of certain categories, such as sick persons and aliens, and, particularly, about the law of January 1989, which authorized police to order alcoholics and drug abusers to submit to treatment. In France, only administrative authorities could issue such an order and even they could not do so without consulting two doctors.

41. Few constitutions provided for the protection of aliens and, in that regard, Sweden was to be commended. However, article 20 of the Swedish Constitution guaranteeing the rights of aliens was difficult to read and even misleading in places. Indeed, the wording did not reflect the extent to which aliens in Sweden were actually protected under article 9 of the Covenant. Contrary to article 13 of

the Covenant, the Constitution provided no remedy for a person expelled from Swedish territory because he was suspected of terrorist involvement. The fact that few persons were in those circumstances was not a sufficient reply.

42. Mr. EL-SHAFEI praised the Swedish delegation for its efforts to provide updated information on the human rights situation in Sweden. In attempting to harmonize its domestic legislation with the Covenant, Sweden had clearly taken into account not only observations by the Committee on its second periodic report, but also observations by other human rights treaty bodies. Sweden had also acceded to the Optional Protocol and a number of its citizens had availed themselves of the redress procedure for which it provided.

43. The procedure for admitting refugees to Swedish territory still gave cause for concern. Greater efforts must also be made to combat racist tendencies. The discussion of threats to the environment and lifestyle of indigenous populations raised questions as to whether property matters were handled so as to benefit certain indigenous groups. Lastly, he wondered whether minorities could preserve their own language and culture.

44. Mr. LALLAH praised the Swedish delegation for its report and its constructive replies to questions by Committee members. With regard to recruitment of the judiciary, it was not apparent from the Swedish Constitution that the judiciary was completely separate from the legislative and executive branches. There was a danger that the public would perceive the judiciary as part of the civil service rather than as an independent branch which acted independently. He also wondered about the practice of judges becoming advisers to the Government. The judiciary should remain a higher order, separate from the executive branch; indeed, the executive branch should be answerable to the judiciary.

45. Mr. MYULLERSON commended the Swedish delegation on its report and responses to the Committee and noted that Sweden could serve as a model for other countries with a less established democratic tradition by incorporating the provisions of the Covenant and other international treaties more fully in its domestic laws. For example, in the Soviet Union, when he had proposed a constitutional amendment that would bring national law in conformity with the provisions of international treaties, Sweden had been cited as a country where international law was not fully incorporated in domestic law, without any apparent detriment to the protection of human rights.

46. Mrs. HIGGINS also commended the Swedish delegation on its report and on the manner in which it had engaged in dialogue with the Committee. She agreed with Mr. Lallah that the public must perceive the judiciary as independent, and with Ms. Chanet concerning the compulsory treatment of alcoholics and drug abusers. She also agreed with Mr. Fodor that periodic reports should be as comprehensive as possible, and should include some reference to separate instruments elaborated in relation to specific articles of the Covenant.

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47. While welcoming the new legislation in Sweden as it bore upon article 9 of the Covenant, she remained concerned that article 9 (3) was not yet the basis of Swedish practice concerning bail. Refusing bail so that the wealthy would not have an unfair advantage was not defensible. While satisfied with the information provided concerning detention on remand, she was concerned that a defence could potentially carry imprisonment of not less than two years. The assumption that that period could serve to offset a longer prison term reversed the very presumption of innocence. In any case, it was not justification for refusing bail. She was also concerned that the Swedish system permitted extended periods of solitary confinement, however necessary that might be in order to prevent collusion among terrorists. She welcomed the abolishment of municipality imprisonment in future legislation, as she had been concerned that it could occur purely on the basis of an administrative decision. She also welcomed the fact that the remaining controls were subject to court authorization, even though a three-year interval between court reviews was too long.

48. Mr. DIMITRIJEVIC also commended Sweden on its report and the answers it had provided to the Committee. A country as advanced as Sweden in the field of human rights also provided matter for reflection on possible future concerns. Often, in the more advanced countries, less compassion was shown towards persons deemed to be sufficiently covered by Government regulations and agencies, such as aliens, the poor and the elderly. He was somewhat concerned, for example, by what might be called the overzealousness of social legislation authorizing the compulsory treatment of alcoholics and drug offenders, the removal of children from homes deemed to be unsuitable and the censorship of extreme violence in the media.

49. The problem of terrorism also raised new considerations. The charge of terrorism was serious, and greater protection should be afforded to those accused of it; a person suspected of terrorist involvement should not be immediately deprived of his rights; when stopping and searching passengers at airports, officials should not always pick out persons with swarthy complexions. Thought must be given to new ways and means of combating terrorism while still maintaining basic individual rights.

50. Mr. ANDO said that, notwithstanding the high degree of respect for human rights in Sweden, some shortcomings remained. In common with many other signatories, Sweden had not incorporated the Covenant into its domestic legislation, as a result of which there were some gaps between the provisions of the Covenant and Swedish law. With regard to restraining orders in particular, there was a need for safeguards to prevent their abuse.

51. Of all human rights issues, discrimination was one of the most basic. Affirmative action itself constituted discriminatory treatment. Numerical equity should not amount to an end in itself, the true goal being to reflect the views of as wide a spectrum of society as possible. It was important to devise the most suitable approach in each specific situation.

52. The CHAIRMAN said that the Swedish delegation had engaged in a most constructive dialogue with the Committee, having striven to satisfy the concerns expressed by its members. In particular, the explanation regarding Sweden's reservation in respect of article 14 (7) had indicated that the scope of the reservation was less far-reaching than the Committee might have concluded on a literal construction. The discussion of provisions relating to discrimination had also been very useful in that such issues, in societies where gross violations did not occur, constituted a central element in the protection of human rights.

53. Mr. CORELL (Sweden) said that Sweden took a very serious interest in the protection of human rights. His Government had contributed to the formulation of various international human rights instruments, and had supported the establishment of committees to which States parties should report regarding the fulfilment of their obligations. Accordingly, it was quite natural for Sweden to engage in a dialogue with the Human Rights Committee. Dialogues must, of course, be conducted in such a manner that both States parties and the Committee maintained their objectivity and credibility, and concern for human rights must be expressed on an ongoing basis, in that such rights did not constitute a finite goal which could be attained once and for all.

54. The CHAIRMAN said that the Committee had concluded its consideration of the third periodic report of Sweden; the fourth periodic report was due to be considered in October 1994.

The meeting rose at 5.50 p.m.

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Forty-first session

SUMMARY RECORD OF THE 1045th MEETING

Held at Headquarters, New York,
on Monday, 1 April 1991, at 10 a.m.

Chairman: Mr. POCAR

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Third periodic report of the United Kingdom

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Kingdom (CCPR/C/58/Add.6, Add.11 and Add.12)

1. At the invitation of the Chairman, Mr. Halliday, Mr. Beamish and Mr. Stock (United Kingdom) took places at the Committee table.

2. The CHAIRMAN, welcoming the members of the delegation, thanked them for having supplied the Committee with written submissions incorporating recent developments, which would greatly facilitate discussion of the issues involved.

3. Mr. HALLIDAY (United Kingdom), introducing the third periodic report, said that the general approach adopted in compiling it had been to concentrate on developments that had occurred since the second periodic report. The report had been submitted in October 1989, and since then there had been a number of significant developments, some of which were covered in document CCPR/C/58/Add.12. Those developments included the Family Law Reform Act, 1987, which had dealt with illegitimacy; the Children Act, 1989, a comprehensive reform of the law relating to children which sought to promote and safeguard their welfare while protecting the rights of parents; the abolition of corporal punishment in State-maintained schools in Great Britain under the Education (No. 2) Act, 1986, and in Northern Ireland by an order in council; preparation to ratify the Convention on the Rights of the Child; the Police and Criminal Evidence Act, 1984, dealing with police powers, the rights of persons in police detention, police discipline and complaints against the police, along with codes of practice in connection with powers of search and seizure of property, detention, treatment, questioning and identification of persons, and tape recording of police interviews; the Security Service Act, 1989, setting out the functions of the service and establishing a commissioner and an independent tribunal to investigate complaints; replacement of section 2 of the Official Secrets Act, 1911, by the Official Secrets Act, 1989, conferring protection through the criminal law on a more limited class of official information; a statutory right to compensation, in accordance with article 14 (6) of the Covenant, through section 133 of the Criminal Justice Act, 1988; penalization of acts amounting to torture by the creation under the Criminal Justice Act, 1988, of a specific offence of torture based on the definition in the relevant United Nations convention; and the Fair Employment Act (Northern Ireland), 1989, which strengthened earlier laws designed to ensure equitable distribution of job opportunities between the Catholic and Protestant communities in Northern Ireland.

4. The Government of the United Kingdom had announced on 4 March 1991 the appointment of a Royal Commission to undertake a wide-ranging review, embracing all stages of the criminal justice process in England and Wales, to examine whether there were further ways in which the administration of justice could be improved in order to prevent the conviction of innocent people while also securing the conviction of the guilty. The Government, having published the report of an

(Mr. Halliday, United Kingdom)

independent inquiry into the prison system in England and Wales, had announced some significant measures that would take effect immediately and had undertaken to produce a full response in the form of a White Paper later in 1991.

5. The seriousness of the continuing threat of terrorism had meant that there was a regrettable, but continuing, need for exceptional measures to help to counter it. Among them was the power to detain suspects for up to seven days under the Prevention of Terrorism (Temporary Provisions) Act in respect of which the United Kingdom had decided in December 1988 that it was right to derogate under article 4 of the Covenant and under the European Convention on Human Rights.

6. Mr. BEAMISH (United Kingdom), noting the diversity of the dependent territories, said that inevitably the pace and completeness with which law, practice and capacity within them could be aligned with the norms of civil and political rights codified in the Covenant would also vary. The aim of the Government of the United Kingdom was to provide them with security, political stability and efficient, honest and representative government while taking full account of local customs and views. In the matter of self-determination, it was the policy of the Government of the United Kingdom not to seek to influence opinion in the dependent territories but to remain ready to respond positively when independence was the clearly and constitutionally expressed wish of the people.

7. As for constitutional development, a review had recently been completed of the Cayman Islands Constitution and, following a decision in 1986 temporarily to suspend it, ministerial government had been reinstated in the Turks and Caicos Islands in 1988 and the Islands' inhabitants were going to the polls on 3 April 1991 for the second time since 1986. On 28 March 1991, the Secretary of State for Foreign and Commonwealth Affairs had announced that, following local consultations, he would be submitting an order in council for royal approval to abolish the death penalty for murder, substituting life imprisonment, in the Cayman Islands, the Turks and Caicos Islands, the British Virgin Islands and Montserrat.

8. A survey undertaken by a senior judge in 1989 into prison installations in the British Virgin Islands, the Turks and Caicos Islands and Montserrat had recommended the building of prisons, better facilities for rehabilitation, and arrangements for community service as an alternative to custodial sentences. Those recommendations had been accepted, funds had been earmarked, sites had been chosen and construction work was expected to begin during 1991.

9. Many of the constitutions of the dependent territories included a justiciable Bill of Rights, and since the second periodic report a section on fundamental rights and freedoms had been included in the new Constitution of Montserrat.

10. Turning to the position of Hong Kong, which remained unique because of the arrangements for its future, he said that the Sino-British Joint Declaration of 1984 under which it would revert to the People's Republic of China on 1 July 1997 made specific provision for the Covenant as applied to Hong Kong to remain in force, and there would in due course be discussions between the Governments of the

(Mr. Beamish, United Kingdom)

United Kingdom and the People's Republic of China about the exact mechanism by which that provision would be implemented. The Basic Law for the future Hong Kong Special Administrative Region had been promulgated since the third periodic report was submitted, and it reproduced, in its article 39, the provision in the Joint Declaration that the Covenant should remain in force after 1997.

11. There had been a number of important developments in the situation in Hong Kong with regard to human rights since the first periodic report was submitted. The first was the introduction into Hong Kong's legislature of a bill of rights which when enacted made justiciable in Hong Kong courts the rights and freedoms contained in the Covenant as applied to Hong Kong. The bill when enacted would be a significant contribution to the enhancement of civil and political rights in Hong Kong. It was also the intention of the Government of the United Kingdom to seek an amendment to the Letters Patent - Hong Kong's primary constitutional document - to ensure that no future legislature which derived its competence from them could validly enact any law that was inconsistent with the Covenant. Since the bill was introduced, a special ad hoc group of the Legislative Council had been holding detailed discussions with the Hong Kong Government on its content, and it was expected that the bill would become law by the summer of 1991.

12. There had been considerable changes in recent years in the development of representative government in Hong Kong. On 16 February 1990 the Secretary of State for Foreign and Commonwealth Affairs had announced that the Hong Kong Government would be making arrangements to introduce 18 directly elected seats into the Hong Kong legislature in 1991. The increase, above the 10 directly elected seats envisaged in 1988, reflected a widely held view in the Hong Kong community that the pace of political development should be more rapid, and would mean that in 1991 there would for the first time be a majority of elected members in the legislature. Preparations for direct elections in the autumn of 1991 were under way, and people in Hong Kong were being encouraged to take an active part, whether as voters or as candidates.

13. Hong Kong had a very good record as a port of first asylum for Vietnamese migrants, and continued to deal with the problem in a humane way pending a satisfactory international solution. Because Hong Kong dealt fairly with arrivals of Vietnamese boat people, it had attracted more asylum seekers than other such ports in the region; since 1975 some 185,000 Vietnamese asylum seekers had arrived in Hong Kong. Currently, there were some 52,000 Vietnamese in Hong Kong: 8,000 had been given refugee status and permission to remain pending resettlement overseas; 15,000 had been determined not to be refugees and were awaiting repatriation; and 29,000 were waiting to have their status determined. In the period between 1979/80 and 1990/91, the Hong Kong administration had spent some $US 450 million on the overall care of Vietnamese migrants, and the cost of the refugee status determination process was estimated to be $US 9.6 million. More than 2,000 government employees were engaged in tasks related to the care of asylum seekers. Hong Kong continued to work closely with the United Nations High Commissioner for Refugees (UNHCR), and a number of changes had been made following

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consultation with the UNHCR to streamline and improve status determination procedures; the Hong Kong administration accepted decisions where the UNHCR declared a person to be a refugee even though that person had been screened out as a non-refugee.

Constitutional and legal framework within which the Covenant is implemented (art. 2 (2) and (3) of the Covenant) (sect. II of the list of issues)

14. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of the United Kingdom, namely: (a) in view of the period of time that had elapsed since ratification of the Covenant, whether it was intended to review reservations thereto and to withdraw some or all of them; (b) whether consideration was being given to incorporating the Covenant into the domestic law of the United Kingdom and the dependent Territories; (c) whether further consideration had been given to ratifying the Optional Protocol to the Covenant, especially in view of the fact that the inhabitants of the dependent Territories could not resort to regional procedures for the protection of human rights of a similar character; (d) whether the 1990 Hong Kong Bill of Rights had supremacy over other laws; (e) whether in the view of the Government of the United Kingdom the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China adopted by the National People's Congress on 4 April 1990, especially its articles 18 (4), 39 and 158, corresponded to the Joint Declaration of 1984 and to the United Kingdom's intention to secure application of the Covenant in the future Administrative Region, whether the Government of the United Kingdom planned to discuss possible inconsistencies between the Basic Law and the Covenant with the Government of the People's Republic of China before the Joint Declaration was fully implemented, and what arrangements were contemplated for ensuring that reporting obligations relating to Hong Kong would be met after 1997; and (f) experience with the operations of Hong Kong's Commissioner for Administrative Complaints.

15. Mr. HALLIDAY (United Kingdom), referring to section I (a), (b) and (c) of the list of issues, said that the reservations were kept under constant review, and with one exception would all be retained. The reservation in respect of article 25 (c) concerning the Isle of Man would be withdrawn since women residents there were now eligible for jury service. The position of the Government of the United Kingdom with respect to incorporation of the Covenant into domestic law remained unchanged, and as the report made clear there were no plans for such legislation; the position with respect to the dependent Territories had been dealt with in the opening statement of Mr. Beamish. The Government of the United Kingdom had no current plans to become a party to the Optional Protocol to the Covenant, but the inhabitants of most of the dependent Territories could resort to the same regional procedures for the protection of human rights as were available to inhabitants of the United Kingdom.

16. Mr. BEAMISH (United Kingdom), dealing with section I (e) of the list of issues, said that the Government of the United Kingdom had satisfied itself that the Basic Law was on the whole consistent with the basic principles enshrined in the Joint Declaration and corresponded with its intention to secure the continued

(Mr. Beamish, United Kingdom)

application of the Covenant beyond 1997. Article 39 of the Basic Law provided that the Covenant should remain in force and should be implemented through the laws of Hong Kong. In respect of article 18 (4) of the Basic Law, it was to be noted that relevant national laws might be applied only in a state of war and when turmoil endangered national unity or security, and even then only when such turmoil was beyond the control of the Government of the Special Administrative Region. The Government of the United Kingdom saw no inconsistency between that and article 4 of the Covenant, but wished to emphasize that in the Joint Declaration the Governments of the United Kingdom and the People's Republic of China had undertaken that the Covenant's provisions would remain in force in Hong Kong; article 39 of the Basic Law gave effect to that undertaking. Regarding article 158, it would be for the Hong Kong courts to interpret the Basic Law for all matters in respect of which Hong Kong would have autonomy. Article 158 was compatible with and gave effect to those provisions in the Joint Declaration, which stated that except for foreign and defence affairs Hong Kong should be invested with independent judicial power, including that of final adjudication.

17. Mr. STOCK (United Kingdom) said, with reference to section I (d) of the list of issues, that the draft Bill of Rights, which was still being debated but was expected to be enacted before summer by the Hong Kong Legislative Council, contained two key provisions that gave the Covenant supremacy over other Hong Kong laws. Article 3 (2) provided that all pre-existing legislation that did not admit of a construction consistent with the Bill of Rights was, to the extent of the inconsistency, repealed. That provision merely articulated a normal rule of construction in British law regarding the repeal or amendment of earlier by later legislation. Article 4 of the draft Bill of Rights provided that all legislation enacted subsequently should, to the extent that it admitted of such a construction, be construed as being subject to the Bill of Rights. Again, that reflected an existing rule of British construction, particularly in so far as the courts were required to interpret domestic legislation consistently with an international obligation. The status of the Bill of Rights, once adopted, would be no different from that of any other ordinance in Hong Kong, which meant that it could be amended and repealed.

18. It was also planned to amend the Letters Patent, which were the source of legislative power in Hong Kong and its main constitutional document, to prohibit the enactment of any law that restricted rights and freedoms in a manner inconsistent with the Covenant. The application of the Letters Patent to Hong Kong would, of course, fall away on 1 July 1997; but the Basic Law promulgated by China would replace the Letters Patent as Hong Kong's constitutional document, and article 39 of the Basic Law was the mirror of the amendment to the Letters Patent just described and would give effect to the Covenant in Hong Kong law.

19. With reference to section I (f) of the list of issues, he observed that the Office of the Commissioner for Administrative Complaints had been operating effectively from 1 March 1989 to 20 March 1991, during which period 372 complaints had been received; 59 of them were still under investigation, and 204 had been investigated, 23 of which had been found substantiated, 82 partially substantiated,

(Mr. Stock, United Kingdom)

and 99 unsubstantiated. In his second annual report to the Hong Kong legislature for the period ending 30 June 1990, the Commissioner had reported that departments against which complaints had been made had been helpful, and had acted to remedy procedural defects or correct errors highlighted by the investigation of the complaints even prior to the reports on the investigations. Thus far, there had been no report of non-compliance with the Commissioner's recommendations. The remedies recommended had varied. They ranged from a review of procedures or decisions to payments to complainants to the proffering of an apology or to undertakings to avoid similar errors in the future. In his report - copies of which were available to the members of the Committee - the Commissioner addressed the popular misconception that his office had little authority and maintained that his substantial powers were comparable to those of an ombudsman in civil-law countries. He could obtain relevant documents, examine government officials and persons under oath, and impose fines for failure to appear or to furnish documents. The Government could not refuse documents or other evidence on the ground that it would be against the public interest, except in the limited cases where the Governor or Chief Secretary certified that there should not be disclosure. It had recently been decided, moreover, to extend the Commissioner's jurisdiction to previous government departments which had now become autonomous bodies. The Commissioner concluded in his report that the current referral system by which only those complaints referred to him by legislators could be investigated was fairly narrow and did in fact discourage complaints. In 1991 there would for the first time be 18 directly elected members of the Hong Kong Legislative Council responsible for geographical constituencies, which should provide easier access to legislators. The United Kingdom would monitor the referral system, and was in any case committed to a review of it in 1992.

20. Ms. CHANET, thanking the United Kingdom delegation for a very interesting and in-depth report and for the useful oral enumeration of subsequent legislation, said, with reference to section I (b) of the list of issues, that it was her understanding that many in the United Kingdom were urging the incorporation of the Covenant into the domestic law of the land. Noting that many laws had been passed and practices altered in response to judicial decisions against the United Kingdom in the European Court of Human Rights (para. 5 of report CCPR/C/58/Add.6), she asked whether it would not be preferable to avoid such piecemeal, a posteriori legislation. The United Kingdom was the country most often condemned by the European Court, not because of its human rights record but simply because it lacked human rights legislation and its citizens could bring complaints only to an international tribunal. It was true that legislation was not a panacea and that common law could protect human rights. Common-law rules, however, rarely reflected perfectly the corresponding provisions of the Covenant. Also, United Kingdom legislation was often not generally applicable throughout the realm, as indicated in paragraph 75 of report CCPR/C/58/Add.6. She therefore believed that the United Kingdom should rethink its position on the matter, in the interest of greater juridical security.

21. With reference to section I (a) of the list of issues, the delegation had indicated that the United Kingdom intended to keep its very long list of

(Ms. Chanet)

reservations to the Covenant, many of them giving the Covenant only a distributive applicability by declaring various provisions inapplicable in the case of certain dependent Territories. In that context, she would like clarification of the legal reasoning behind the reservation to article 1 of the Covenant, by which the United Kingdom obligations under Articles 1, 2 and 73 of the United Nations Charter took precedence over the Covenant. Did that mean that the United Kingdom reserved the exclusive right to raise the issue of self-determination in all cases, and that no Non-Self-Governing Territory could request self-determination; and was that why the people of Hong Kong had not been invited to express their wishes concerning their own future at the time of the Joint Declaration?

22. The Committee had been told that the draft Bill of Rights incorporated the Covenant in the legislation of Hong Kong and gave it priority over other legislation, and also that the Basic Law was compatible with the Joint Declaration. She herself still had doubts regarding article 18 (4) of the Basic Law, which was particularly vague. She wondered what sanctions would apply if one of the parties to the Joint Declaration failed to respect the agreement after 1997. She found no specific denunciation clause in the Joint Declaration, in which case the standard rules of treaty law would apply. She asked whether the United Kingdom felt that such rules would suffice or whether it planned to conclude a supplementary agreement with the Government of Hong Kong to ensure the implementation of the Joint Declaration and, especially, of the Covenant.

23. Mr. LALLAH, referring to section I (b) of the list of issues, expressed unhappiness at the continuing failure of the United Kingdom, in the fifteenth year since its ratification of the Covenant, to take the great step forward and give the Covenant, with its guaranteed rights and remedies, the force of law as such in the United Kingdom. He saw paragraphs 1 to 10 of report CCPR/C/58/Add.6 as a kind of apology for the situation, but remained unconvinced by the arguments put forward.

24. If common law was an expression of the national ethos, he failed to understand why it would not take into account the modern ethos governing human rights. Common law could, after all, be amended. Traditionally. common law was not the only part of the law that guaranteed human rights or had been resorted to for that purpose. Other bills of rights had on various occasions up to 1689 been enacted, and one would have thought that the need was apparent for other such legislation incorporating the developments in intervening centuries.

25. It was his impression that British lawmaking was geared more to limitations than to enactment of rights. It had been maintained that all rights under the Covenant were recognized either in common law or in the various British statutes. Yet in one of the latest cases to have gone to the House of Lords - the ex parte Brind case - the Law Lords had not considered it relevant to take into account article 10 of the European Convention on Human Rights (the replica of art. 10 of the Covenant) for the purpose of deciding the scope of the rights involved and of the limitations which had been brought to those rights by executive action under legislative authority. More broadly, the prison riots in the country the previous year and the reports of prison conditions were closely related to obligations under

(Mr. Lallah)

articles 9 and 10 of the Covenant, especially where remedies were concerned, and surely the rioters, to whom common law had been applied, would have been justified in entering an action in court under the Covenant on the grounds of inhuman or degrading conditions. If the United Kingdom had had a bill of rights, surely the long detainment of Iraqis and Palestinians could, under article 4 of the Covenant, have been a basis for court challenge, just as the recent cases involving invasion of privacy could have been challenged under article 21 of the Covenant. Remedies would unquestionably have been available if the right not only to impart but to seek information, guaranteed under article 19 of the Covenant but currently denied by laws such as the Official Secrets Act or the Contempt of Court Act, had been statutorily recognized. The same applied to the many rights under article 26 of the Covenant, for the violation of which there was no remedy under the law.

26. It would seem that the evolution of common law had not kept pace with the evolution of the national and the international ethos in the protection of human rights. Since, under the British system, Parliament was sovereign in the making and breaking of laws, it should be nationally acceptable to have Parliament write a human rights code of conduct into its national legislation. Some indigenous method should be devised for writing the basic provisions of the Covenant, together with all possible limitations, into a law which all could see. Common law was hard to see, even for judges. Parliament could agree to state that any legislation inconsistent with that law would be void to the extent of the inconsistency, and that any limitations not punishable would not be legislated for or, if legislated for, would be justiciable.

27. Furthermore, the argument that care must be taken not to propel judges into the political arena (para. 8 of report CCPR/C/58/Add.6) was not valid in terms of human rights, since the United Kingdom had, after all, taken a political decision in ratifying the Covenant in the first place, thus making it a standard for the country's judiciary as well as its executive and legislature. In a number of new Commonwealth constitutions, the United Kingdom had not hesitated to give such power to the judges. He himself knew it from personal experience, and the judges of the Privy Council also knew it when they were called upon to interpret what had been described as "broad propositions" (para. 7 of report CCPR/C/58/Add.6). The provisions of the Covenant were not large statements of vague principle at all, and could perfectly well be interpreted at the highest judicial level. There was no reason that the United Kingdom could not give itself the guaranteed fundamental rights it had been instrumental in giving to other countries. He also agreed with Ms. Chanet that the British judiciary should not be deprived of the opportunity to define the law but made to wait for other international courts to pronounce on the rightness or wrongness of decisions.

28. He had a few concerns regarding the situation in Hong Kong. Mr. Stock had used the phrase "construction of statutes", which he took to mean that if pre-1977 and post-1997 laws were inconsistent, they would be void to the extent of the inconsistency. That would not in itself be strange, as most constitutions of the new Commonwealth contained such a provision, stating that the constitution was the supreme law.

(Mr. Lallah)

29. Clauses 3 and 4 of the Bill of Rights could be amended, and the Letters Patent could also be nullified after 1997. He wondered whether it would be prudent to include in the Bill a clause binding Parliament to ensure that no provision of the Bill of Rights could be amended except by a weighted majority, and that that clause itself could not be amended except by a weighted majority. There was no way of knowing what the future held, but all precautions should be taken when drafting laws. He was also unhappy with the provision of a waiting period, to give the Government some time to ensure that laws were made consistent with the Bill of Rights. Such a waiting period was surely unnecessary, as it would be an inordinate task to amend all the existing laws and make them consistent with a particular bill.

30. Turning to paragraph 13 of the report CCPR/58/Add.6, he noted that the reports and the summary records were to be made widely available. He wished to know how that was to be done and whether they would be available also in the dependent territories. It did not seem feasible to consider the Report of the United Kingdom and that on the dependent territories together, and he believed they should have been submitted separately.

31. Mr. AL-SHAFEI said that while there had sometimes been differences between Britain and the populations of its former colonies, on the whole the march of such countries towards independence and self-determination had gone forward smoothly. He too felt that it would have been preferable for the Report on the United Kingdom to be distinct from that on the dependent territories.

32. In the light of recent developments, he felt there was a need to concentrate on the Hong Kong situation, as it affected fundamental rights and freedoms. Neither the Bill of Rights nor the Basic Law established a procedure for periodic reporting of the human rights situation in Hong Kong to be continued after 1997. There was thus no assurance that the monitoring role of the Committee could be maintained after 1997, which would be essential if the Covenant was to stay applicable to Hong Kong, as had been pledged by both parties to the Sino-British Joint Declaration.

33. It was possible that China might accede to the Covenant before 1997, but on the assumption that that would not be the case, he asked whether that question had come up in the negotiations between Britain and China. He wished to know, further, how the United Kingdom intended to honour the commitments it had made in the Joint Declaration.

34. He had noted the delegation's reply to section I (c) of the list of issues, namely that the ratification of the Optional Protocol to the Covenant was still under review, and that the people in the dependent territories would be able to resort to some regional procedure. He felt that the ratification of the Optional Protocol would be the most concrete demonstration of the commitment of the United Kingdom to the continuing protection of the rights and freedoms enshrined in the Covenant.

(Mr. Al-Shafei)

35. Turning to article 20 of the Basic Law, he asked for information on the history of the drafting of the article and on its scope of application. He asked whether it was conceivable that, under that article, greater powers might be given to the legislative or the executive. His next concern was with the revision of existing laws in Hong Kong. Under article 2 of the Covenant, each State party undertook to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant. That raised the issue of reviewing existing legislation to ensure that it was compatible with the Covenant. Article 8 of the Basic Law ensured that laws previously in force in Hong Kong would be maintained except for any that contravened the Basic Law itself. The draft Bill of Rights went further, stating that all pre-existing legislation that did not admit of a construction consistent with the bill of rights itself would be repealed to the extent of the inconsistency.

36. The current review of the legislation raised several issues: whether there had been any review of the laws passed in Hong Kong after 1976, the date of Britain's accession to the Covenant; whether the Bill of Rights once adopted, would be entrenched in the Constitution or would have equivalent status to any other law; and whether there was any guarantee that the proposed one-year freeze scheduled to follow the adoption of the draft Bill of Rights would not be extended.

37. The addendum to the third periodic report (CCPR/C/58/Add.1) stated in its paragraph 20 that there would be a review of existing laws, particularly those enacted before the Covenant became applicable to Hong Kong; yet, some contentious laws had been enacted since that date: on freedom of expression; on film censorship, and on television and telecommunications, for example. With regard to the Law Reform Commission referred to in paragraphs 22 and 23 of that addendum, he wished to know the composition and status of the Commission, the results of its work, whether its recommendations had a bearing on government decisions, and how long it took the Commission to review a law.

38. Mr. ANDO said that the United Kingdom was the only member of the Security Council which still regarded the International Court of Justice as having compulsory jurisdiction. This demonstrated the United Kingdom's respect for the rule of law, not only in the domestic arena but in the international community as well. The Committee was obliged to look at Britain's human rights situation in the light of that record. That was not to suggest that it, like every other country, did not have problems in the human rights area. The entire Committee was aware of the tragic situation in Northern Ireland, but democracy relied on reason, and when a segment of the population behaved unreasonably it became very difficult to safeguard human rights. He also pointed out that the report on the dependent territories had been submitted at the request of the Committee itself. He associated himself with the questions posed by Ms. Chanet and Mr. Lallah on incorporation and reservation, and with Mr. El Shafei's question regarding the monitoring mechanism which would be in place in Hong Kong after 1997. He drew the Committee's attention to article 151 of the Basic Law, and asked whether consideration had been given to making use of its provisions to enable Hong Kong to become a party to the Covenant directly.

39. Mr. AGUILAR said that the first 10 paragraphs of the United Kingdom's third periodic report (CCPR/C/58/Add.6) seemed to contain a list of excuses for not implementing, or implementing with considerable restrictions, the provisions of the International Covenant on Civil and Political Rights. The way in which common law was applied in the United Kingdom gave rise to concern. Particularly disheartening was the question of a bill of rights. As Mr. Lallah had observed, British legislation embodied a series of norms which tended to limit rights rather than promote them. The United Kingdom was the country which was most often denounced by the European Court of Human Rights. Perhaps that was due to the fact that the British juridical system took less account of international human rights standards.

40. In paragraph 2 of its report, the United Kingdom stated that the rights and freedoms recognized in other countries' constitutions were protected by it and by Parliament unless they were removed or restricted by statute. For example, the Prevention of Terrorism (Temporary Provisions) Act 1984, which abrogated a number of human rights, had been reconfirmed several times. He hoped that the rights guaranteed under the Covenant would one day be incorporated into the British system.

41. Mr. Beamish had said that, in accordance with article 158 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the responsibility for interpreting the Basic Law rested with the Court of Final Appeal of the region. However, the first paragraph of that article stated that the power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress. The Committee had also been told that the Basic Law was in complete consonance with the Joint Declaration of the Government of the United Kingdom with the Government of the People's Republic of China on the question of Hong Kong. However, there were a number of differences between the Joint Declaration and the Basic Law which must be taken into account. Mr. Stock had said that the rights guaranteed in the Covenant would be "entrenched" in the Hong Kong Constitution and would be in force until 1 July 1997; on that day, the Covenant would cease to apply and the Basic Law would come into effect.

42. Referring to the first paragraph of article 39 of the Basic Law, he said that the phrase "as applied to Hong Kong" could mean as applied when the Basic Law had been adopted by the People's Republic of China. In the Spanish version of that text, that would imply that reference was being made to all the laws which remained in force until 4 April 1990 and that the Hong Kong Bill of Rights not be applicable after 1997. If, in the Spanish version, the phrase tal como se aplican was replaced by tal como se apliquen, the sense of the phrase would be "as applied to Hong Kong" when the Basic Law of the Hong Kong Special Administrative Region entered into force. He wished to know whether that way of interpreting the phrase had been considered by the Joint Committee and, if so, what was the decision reached. According to the Joint Declaration, it appeared that the Covenant, including its article 40, would be implemented in toto after 1997, and he wished to know what guarantees existed that the Covenant would be applied to Hong Kong as of 1 July 1987.

43. Mr. MYULLERSON said that he associated himself with his colleagues who had expressed concern regarding the future of Hong Kong. With respect to section I (c) of the list of issues, he wished to know how the Committee would be able to monitor Hong Kong's implementation of the Covenant after 1997, and he inquired whether that matter had been brought up in the United Kingdom's talks with China.

44. The Committee was aware that the Covenant was not directly applicable in the United Kingdom. However, most of the substantive norms contained in the Covenant were norms which had become generally accepted norms of customary international law. He noted that the United Nations Commission on Human Rights applied such norms to States which were not parties to the International Covenants on Human Rights. Since the customary international law was considered to be part of the law of the land in the United Kingdom, he wished to know whether any attempt had been made to apply the norms contained in the Covenant as norms of customary international law.

45. Mr. MAVROMMATIS said that the inclusion of so many territories in the consideration of a single report was not in keeping with the equality of treatment which should be given to all reports. The Committee should therefore consider the report of the United Kingdom separately, and the reports on its dependent territories should be taken up at another time. In particular, the Committee was not doing justice to the consideration of the question of Hong Kong. With regard to section I (b) of the list of issues, he endorsed the views of Ms. Chanet and Mr. Lallah. He believed that, in the Birmingham Six case, the presumption of innocence had been eclipsed. With respect to section I (a), he was pleased that the United Kingdom had withdrawn some of its reservations to the Covenant. If the United Kingdom withdrew its reservations to the application of the Covenant in Hong Kong, he suggested that the phrase "as applied to Hong Kong" should be replaced by "with respect to Hong Kong".

46. With respect to section I (c), the United Kingdom had indicated that the courts of the dependent territories could resort to European courts. It was indeed unusual to require countries from one part of the world to apply to the courts in another part, and he wished to know the reason for such a procedure. In that regard, the United Kingdom should consider ratifying the Optional Protocol.

47. Since, after 1997, there would be no way for the Committee to monitor the human rights situation in Hong Kong, a specific agreement on the subject should be concluded between the United Kingdom and the People's Republic of China in order to ensure that the provisions of the Covenant would continue to apply. In cases where the people of Hong Kong wished to introduce amendments to the Covenant, weighted voting should be used.

48. The CHAIRMAN recalled that the Committee had requested the United Kingdom to submit a joint report on the United Kingdom and its dependent territories and that it had agreed to consider the report as a whole. It was not possible to consider individual parts of the United Kingdom's report separately; perhaps that procedure could be followed in future.

49. Mr. FODOR commended the United Kingdom's statement regarding the paramount importance of legal remedies in guaranteeing freedoms. However, he did not believe that there was any contradiction between the position of the Government of the United Kingdom as summed up in paragraph 2 of its third periodic report (CCPR/C/58/Add.6) and the concept of a written constitution. Even if the general principles of rights and liberties were proclaimed in written form in a State, adequate guarantees and strong legal remedies would be available. Another important aspect was citizens' awareness of their rights and the precise content and dimension of such rights. In that regard, a written constitution or a comprehensive bill of rights could play a crucial role without adversely affecting guarantees and legal remedies.

50. Although similar legal principles were applicable throughout the entire country, some parts of the United Kingdom, such as Scotland and Northern Ireland, had legal systems which differed from the English system. Accordingly, some laws were not applicable in all parts of the country. At the same time, certain provisions of some laws on the same matters were different in England and Wales and in Northern Ireland and Scotland, respectively. He wished to know whether the State party intended to establish a homogeneous system of laws throughout the country and what kind of difficulties, other than those related to tradition, might arise in the process of unifying the British legal system.

51. Mr. SADI said he hoped that the United Kingdom would hasten to remove its reservation to the Covenant and consider ratifying the Optional Protocol. The fact that the United Kingdom had not seen fit to ratify the Optional Protocol and incorporate the provisions of the Covenant into its laws was not in keeping with the United Kingdom's reputation as a leader among nations. Bearing in mind that the United Kingdom was influenced by the legal opinion of the European Court of Human Rights, he wondered what account it took of the Committee's observations.

52. Commenting on section I (c) of the list of issues, Mr. Beamish had remarked that the dependent territories could resort to regional procedures for the protection of their human rights. He wished to know what regional procedure was available to Hong Kong. Hong Kong was the only dependent territory to be deprived of its rights under articles 1 and 2 of the Covenant. Although the time was short, he hoped that the United Kingdom would not leave Hong Kong with that legacy.

53. It had been stated that the Basic Law was "on the whole" consistent with the Covenant. However, the Covenant did not require general consistency but rather specific, total and unequivocal observance of its provisions. Even if the Basic Law regarding Hong Kong could be amended to reflect faithfully the provisions of the Covenant, it would be difficult for the Committee to monitor Hong Kong's commitment to the Covenant. Unless a mechanism could be found which allowed Hong Kong to accede to the Covenant, Hong Kong's reporting obligations would not be ensured.

The meeting rose at 1 p.m.